

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BISOUS BISOUS LLC,

Plaintiff,

v.

THE CLE GROUP, LLC,

Defendant.

Case No. 3:21-cv-01614-B

DECLARATION OF ANDREA MEYER

1. My name is Andrea Meyer. I am over 18 years of age, of sound mind, have not been convicted of a felony, and capable of making this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. I am the founder and owner of Bisous Bisous LLC (“BISOUS BISOUS”). I am authorized to execute this declaration on behalf of BISOUS BISOUS.

3. I have been a professional pastry chef since 2011 after attaining the Diplôme de Pâtisserie from the highly respected culinary institution Le Cordon Bleu.

4. In late 2012, I opened my pâtisserie, BISOUS BISOUS, at the White Rock Local Market in Dallas. The word “Bisous” is pronounced “bi-zu”. The words “Bisous Bisous” are French for “kisses kisses” and also mean “lots of love.” When greeting friends and loved ones, the French kiss each cheek, one kiss each side. This “hello!” and “until we meet again” is exactly the type of atmosphere we strive to create at our shop and was the inspiration for naming my pâtisserie BISOUS BISOUS.

5. BISOUS BISOUS became a local fixture after several years at the White Rock Local Market. Following this success, I opened a retail shop and bakery at 3700 McKinney Avenue in “Uptown” Dallas under the BISOUS BISOUS name, allowing the brand to grow even further. BISOUS BISOUS specializes in a variety of French-style pastries made from scratch daily, including its signature macarons, cruffins, croissants, tarts, éclairs, and custom-made cakes. By 2018, we felt ready to expand to more stores in other cities in Texas, but I was diagnosed with a rare form of cancer in May 2018 that caused me to re-focus my attention on my health.

6. As its business grew, BISOUS BISOUS registered numerous trademarks with the U.S. Patent and Trademark Office. BISOUS BISOUS owns the following federal trademark registrations for the BISOUS BISOUS word mark and the BISOUS BISOUS PÂTISSERIE

design mark  (collectively, the “BISOUS Marks”):

- BISOUS BISOUS, Reg. No. 4,811,207, covering “bakery goods, excluding solid chocolate” in Class 30;
- BISOUS BISOUS, Reg. No. 5,120,605, covering “retail bakery shop” in Class 35;
- BISOUS BISOUS, Reg. No. 5,120,606, covering “café and restaurant services” in Class 43;
- BISOUS BISOUS PÂTISSERIE [& Design], Reg. No. 4,811,208, covering “bakery goods excluding solid chocolate” in Class 30;
- BISOUS BISOUS PÂTISSERIE [& Design], Reg. No. 5,106,226, covering “retail bakery shop” in Class 35;
- BISOUS BISOUS PÂTISSERIE [& Design], Reg. No. 5,106,227, covering “café and restaurant services” in Class 43.

Several of these registrations are *incontestable*. A compilation of true and correct copies of the foregoing trademark registrations for the BISOUS Marks are attached hereto as Exhibit A.

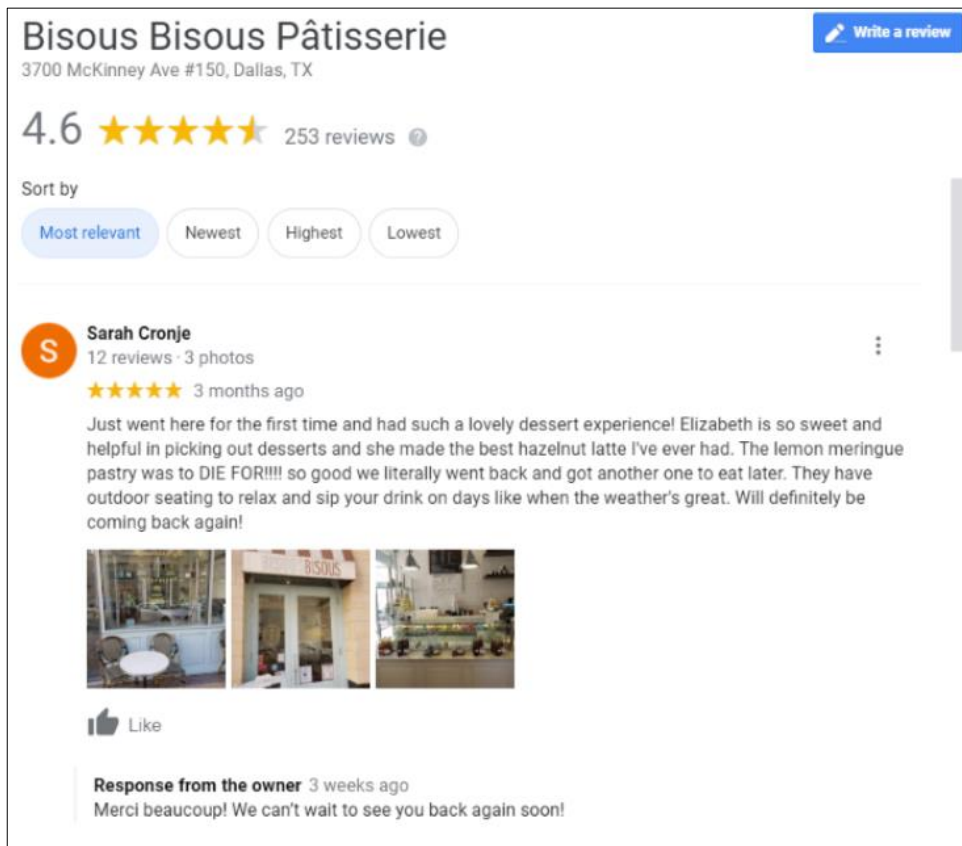
7. Today, in addition to selling pastries and desserts, BISOUS BISOUS offers culinary classes (temporarily suspended for Covid), sells its products in multiple locations through its mobile food truck, and operates an off-site kitchen for its wholesale business under the BISOUS BISOUS word and design marks. A collection of true and correct screenshots taken from pages of BISOUS BISOUS' website at <bisous-bisous.com> on July 12, 2021 showing BISOUS BISOUS' online menu, macaron offerings, cake offerings, class information, and mobile food truck information are attached hereto as Exhibit B.

BISOUS BISOUS' Advertising, Awards, Recognition, and Media Attention

8. BISOUS BISOUS advertises its bakery and products through a variety of media outlets, including via its website, at <bisous-bisous.com>, and social media such as Facebook and Instagram, where BISOUS BISOUS has nearly 6,500 followers and 18,000 followers, respectively. Attached hereto as Exhibit C is a compilation of true and correct copies of screenshots taken from BISOUS BISOUS' Facebook and Instagram accounts on July 14, 2021. Below are representative examples of images posted by BISOUS BISOUS showing its prominent use of BISOUS BISOUS and BISOUS BISOUS PÂTISSERIE:

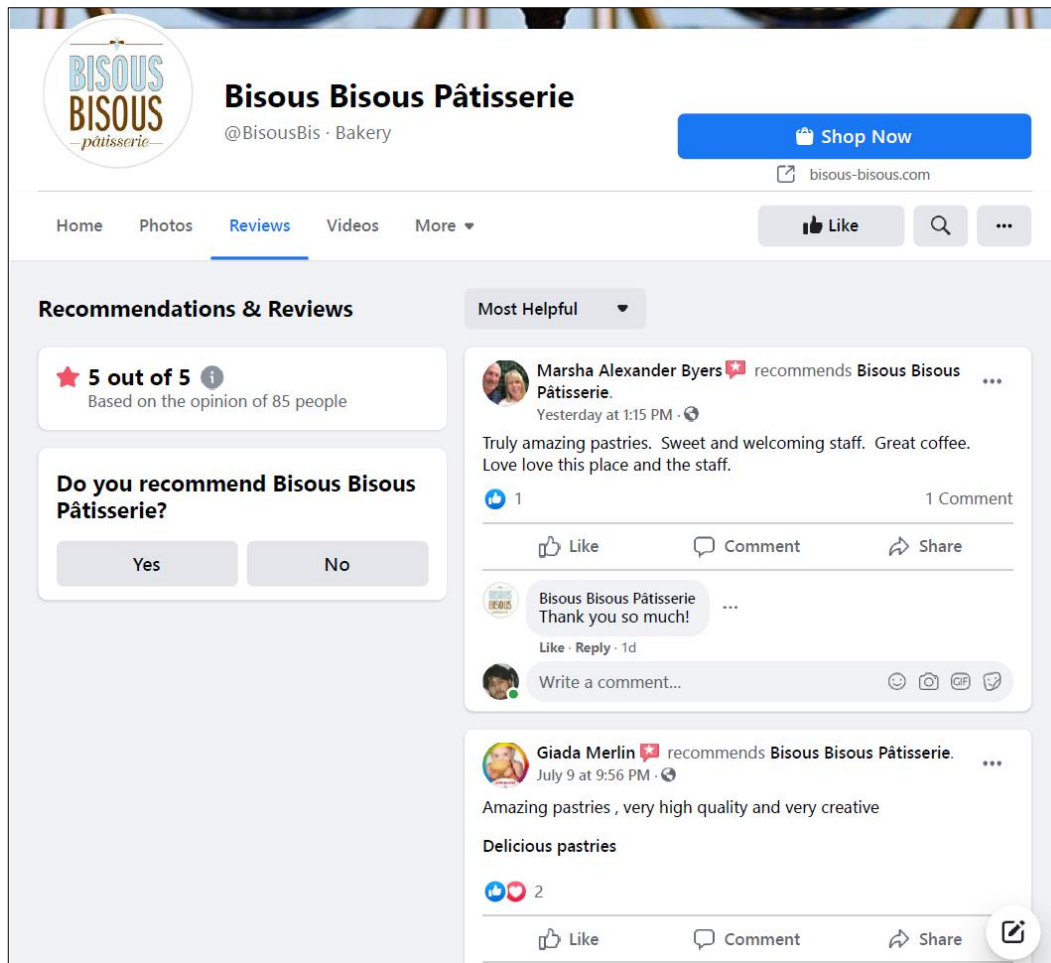


9. As a small, independent, and local business, BISOUS BISOUS relies on word of mouth promotion and customer reviews posted on websites such as Yelp and Google. While the ratings on Yelp and Google can change day-to-day based on new reviews and cannot be unilaterally changed by a business owner, BISOUS BISOUS typically has a rating of at least 4.5/5 stars on Yelp, Google, and TripAdvisor. As of July 15, 2021, BISOUS BISOUS has earned 4.6 stars on Google:



A compilation of true and correct copies of screenshots of the first page or two of BISOUS BISOUS' pages on Yelp, Google, and TripAdvisor as of July 15, 2021 are attached hereto as Exhibit D. If a customer describes an issue concerning BISOUS BISOUS in a review, I strive to respond as quickly as possible, as providing excellent customer service is of great importance to

our business. BISOUS BISOUS has also earned a 5/5 rating on its Facebook page, as shown below and in Exhibit C.



10. BISOUS BISOUS invests considerable time, energy, and resources in the advertising and promotion of its products and services under the BISOUS BISOUS name and mark. In the last two years alone, BISOUS BISOUS has spent tens of thousands of dollars on advertising and marketing efforts.

11. My attendance at culinary events also helps spread the word about BISOUS BISOUS. As just a few examples, I have been invited to the *Taste of Dallas* food festival, *Park and Palate*—a regional food and wine event, and *Chefs for Farmers Food & Wine Festival* in Dallas, and have been featured in promotional material for these events as the chef of BISOUS

BISOUS. Articles discussing these events provide further publicity for BISOUS BISOUS. For example, in a 2015 article about the inaugural *Park and Palate* event, *HauteLiving.com* featured a photo of me, my staff, and my macarons with the caption: “Bisous Bisous served amazing strawberry basil parfaits topped with a tiny basil macaron.” The article also called the parfait the “highlight” of the day. And in 2019, *D Magazine* published short reviews about the participants of *Taste of Dallas*, including BISOUS BISOUS. Attached as Exhibit E are true and correct copies of excerpts of these articles.

12. BISOUS BISOUS has received numerous accolades and recognition as a top bakery. For example:

- BISOUS BISOUS was chosen in 2017 as the “Best Bakery” in Dallas by the Dallas Observer, and continues to hold that title on the Observer’s “Best of Dallas” list.
- BISOUS BISOUS is on USA Today’s “10 Best” list as one of the top ten bakeries in Dallas.
- BISOUS BISOUS was selected as the “Best Bakery for Sweets” in 2015 by *D Magazine* and was *D Magazine*’s “Reader’s Choice” for “Best Bakery for Sweets” in 2016.

See Exhibit F, which is a collection of true and correct copies of online articles about BISOUS BISOUS.

13. BISOUS BISOUS has also been the subject of numerous unsolicited media articles. *EATER Dallas*, an online publication focused on food and eateries in Dallas, wrote about BISOUS BISOUS in articles titled “10 Places to Indulge in Dallas’s Finest Macarons” (2015), “Where to Find the Best Pies in DFW” (2017), and “17 Excellent Options for Father’s Day Takeout” (2020). True and correct copies of these articles are attached in Exhibit F.

14. In connection with my role at BISOUS BISOUS, I have conducted interviews and other press engagements with local Dallas news stations and publications, including with:

- *The Daily Meal* in 2015;
- *Shoutout DFW* in 2020;
- the *Dallas Observer* in 2014, 2015, and 2019; and
- *Central Track* in 2017.

See Exhibit G, which is a collection of true and correct copies of online articles featuring these interviews.

15. In December 2019, I appeared on Fox 4 KDFW's Good Day program to feature BISOUS BISOUS' chocolate peppermint parfait, and again in February 2020 in celebration of the Fifth Anniversary of BISOUS BISOUS on McKinney Avenue. True and correct copies of screenshots of webpages showing my appearances on Fox 4 KDFW are attached hereto as Exhibit H. As shown in Exhibit H and below, I am frequently identified as the owner and chef of BISOUS BISOUS:



16. BISOUS BISOUS' exceptional products, promotional efforts, and growing fan base are all reflected in its sales. In just 2019–2020, BISOUS BISOUS' revenue neared Two Million Dollars.

BISOUS BISOUS Becomes Aware of BISOU and Attempts to Prevent This Dispute

17. In or around January 2021, I learned that The Clé Group (“CLE”), a Houston-based hospitality group, announced plans to open a restaurant in Dallas under the infringing and confusingly similar name BISOU (“BISOU Dallas”). The word “Bisou” is pronounced “bi-zu”—*just like* the word “Bisous.” It differs from Bisous by only one letter and is simply the singular version of “Bisous” that is French for “kisses.” I also learned that the planned location was less than a mile away from BISOUS BISOUS on McKinney Avenue in Uptown Dallas. A true and correct copy of a screenshot of a Google Maps image identifying the location of BISOU Dallas and BISOUS BISOUS is attached hereto as Exhibit I.

18. At around this same time, I learned that CLE had opened another BISOU in Houston while I was in treatment for cancer. Upon learning this, and CLE’s plan for BISOU Dallas, BISOUS BISOUS promptly notified CLE of its longstanding trademark rights in the BISOUS Marks, and requested that CLE cease all use of the confusingly similar name BISOU.

19. In March 2021, CLE’s attorney responded, explaining that CLE would not change its plans or cease use of BISOU—despite noting that my bakery’s name was BISOU BISOU (with no letter “S” at the end) and thus exactly the same as the name his client used, and acknowledging that “Bisou[s] Bisou[s] may be recognized in the Dallas, Texas area,” and that “pastries are offered” at BISOU Houston. *See* Exhibit J, which is a true and correct copy of the response letter from CLE’s attorney.

20. In light of its attorneys’ admissions, we were hopeful that CLE would see reason and change its plans. CLE’s attorney even stated that CLE “does not intend to affiliate or cause confusion with [BISOUS BISOUS] trademarks” (Exhibit J) but that was clearly false. Unfortunately, what I did not realize at the time was that, not only are pastries “offered” at

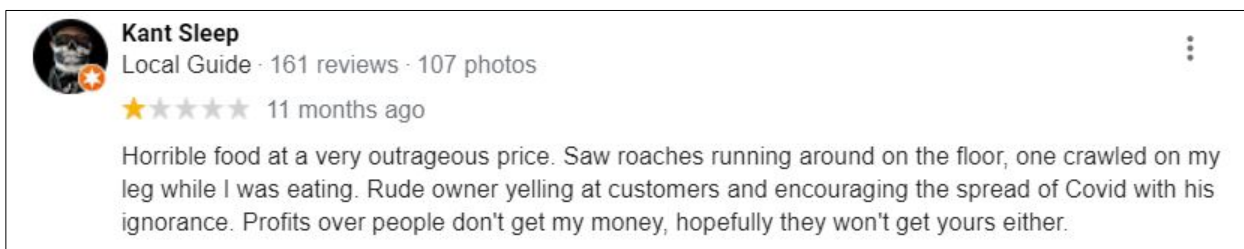
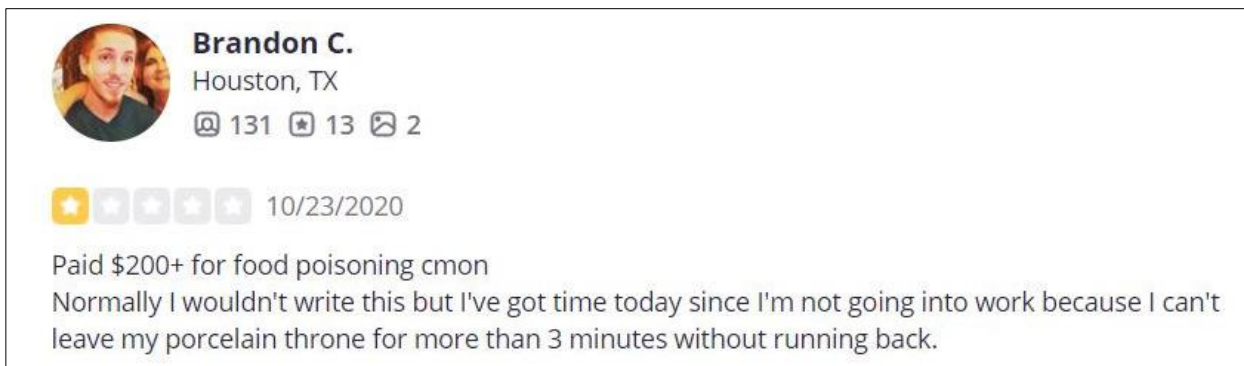
BISOU, BISOU had at some point intentionally copied BISOUS BISOUS by creating a dessert sampler it calls BISOU BISOU:



A true and correct copy of BISOU's dessert menu printed on July 14, 2021 from a PDF available at <https://bisourestaurant.com/menus/> is attached hereto as Exhibit K.

CLE's Notorious Reputation and Disregard for Human Safety at BISOUS Houston

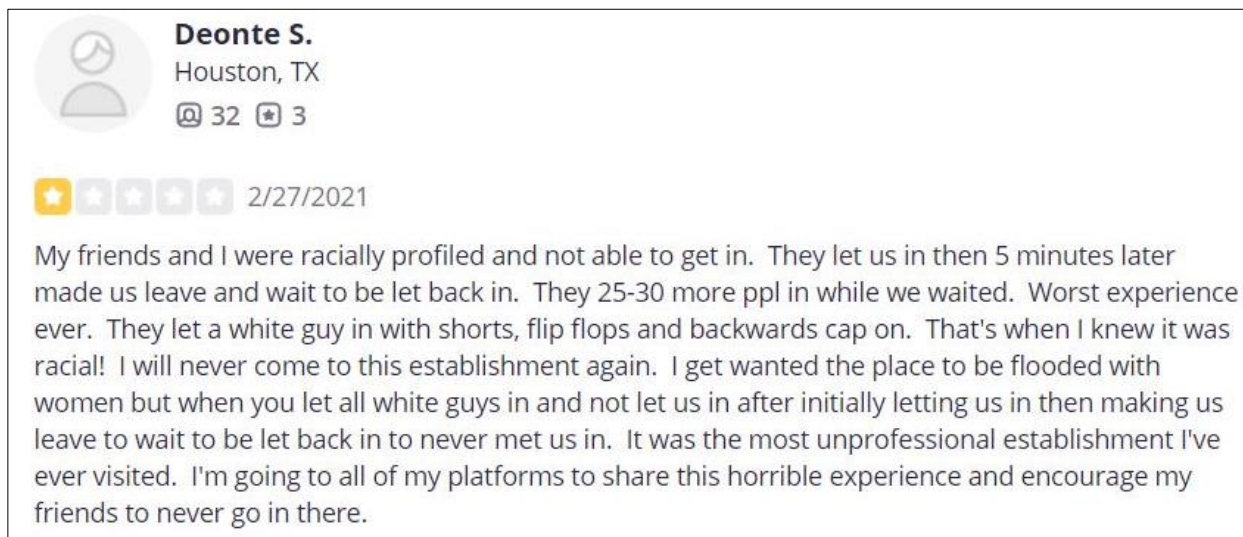
21. Since its opening in late 2018, and particularly in the last two years, CLE's BISOU restaurant in Houston has been criticized by its customers, state regulators, and the industry. On Yelp, comments about BISOU Houston's "extremely underwhelming" food include reports of food poisoning and vermin, as shown in the below review excerpts.





A true and correct copy of screenshots of these and other reviews taken from BISOU Houston's Yelp page at <https://www.yelp.com/biz/bisou-houston-2> and taken on July 12, 2021 are attached hereto as Exhibit L.

22. As shown below, in Yelp, Trip Advisor, and Google reviews, CLE's customers have described experiencing unfair, discriminatory treatment and rude service by the staff and management at BISOU.



**Laura G.**

Houston, TX

📍 12 ⭐ 30 📷 8



2/25/2020

DO NOT dine here. Toulouse, Steak48, and MAD are better places to dine. Bartender didn't know what a high ball glass was, server was rarely present, brought the wrong food order, was celebrating a friends birthday and the table behind us got a little flaming candle while we did not. Drinks were wrong. Awful. We spoke to the manager and he could care less. There's a champagne lunch special on the website that has been on their website for several weeks that they do not honor. Can you say, Bait and switch? This restaurant won't be in Houston for too much longer.

P.S. They actually deleted my review from their Facebook page. Wow.

**Crysie P**

11 reviews



a year ago

I've been here several times and today was absolutely HORRIBLE! Poor service and our food was cold! They made us wait for hours before serving us while we watched the white ppl be services punctually. We started out with a white waiter and they switched us to a black waitress who was terrible and rude! I'll never patronize this place again and I spend a lot of money eating out! Bisou is canceled for me 🤢



ihearttravel100
New York City, New York



105



45



Reviewed May 9, 2021



via mobile

Terrible!

Went for Mother's Day and the food was on the level of eating at a cafeteria. Not good at all. Also, nowhere did it say 20% gratuity automatically included, and when I asked for the manager, nobody came over. We got so frustrated, we just left.

Plus, my mom is handicapped with a handicapped placard, and with no place to park near the restaurant, we had to park valet down the way, and they charged \$9 for it. Everywhere else, they waive fee for handicapped.

What a terrible experience all the way around!

See Exhibit L; Exhibit M, which is a compilation of true and correct copies of screenshots of reviews taken from BISOU Houston's TripAdvisor page at

https://www.tripadvisor.com/Restaurant_Review-g56003-d15517257-Reviews-Bisou-Houston_Texas.html on July 13, 2021; Exhibit N, which is a compilation of true and correct

copies of screenshots of a portion of the Google reviews for BISOU Houston taken on July 14, 2021.

23. In the last year and a half, BISOU Houston has also been called out for disregarding Covid safety precautions. On Yelp and Google, several customers complained about BISOU's management flouting safety ordinances and that CLE's practices even led to a "super spreader" event, as shown in the below reviews and excerpts and in Exhibits L and N.



Brooke F.

Houston, TX

@ 77 ★ 7



4/26/2021

COVID NIGHTMARE. From the moment I walked in I wanted to leave, however, I was there for a friend's birthday party and didn't want to bail out on her. The place was crawling with people bumping and grinding out manufactured fun in a way that I haven't witnessed in...ever. But especially during a pandemic.

The "restaurant" was standing room only and shoulder to shoulder at that. This is prior to the 100% capacity and no mask necessary order by the governor. Bisou got a head start. And after a quick glance, this is not the first complaint regarding their super spreader all-you-can-eat COVID buffet. I wish I would have turned around upon entry. I could have never anticipated the dumb nightmare of an ending I was in for.



Dwayne P.

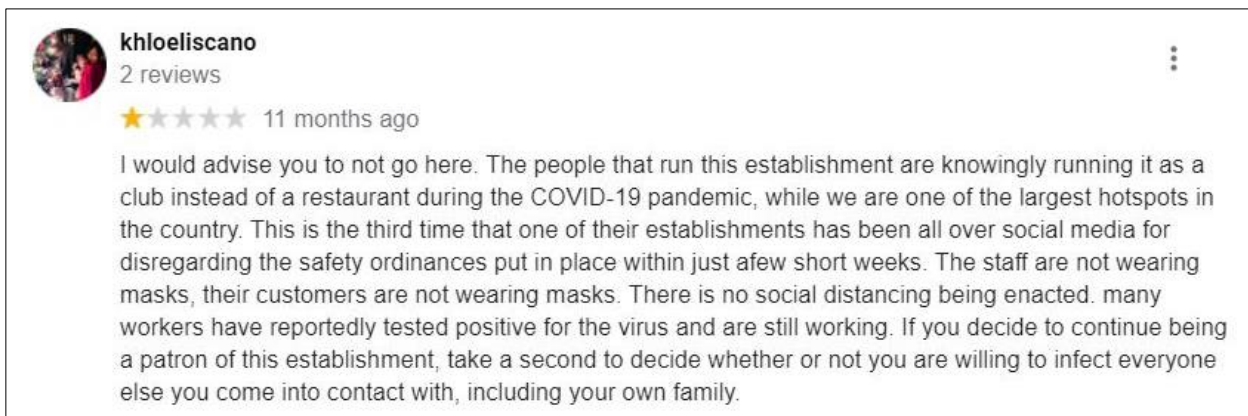
Fresno, TX

@ 92 ★ 13 📷 6



12/24/2020

Zero social distancing and management acted like we had no right to question them. Would not recommend on any level. Irresponsible, disrespectful, and sad. Not worth further comment.



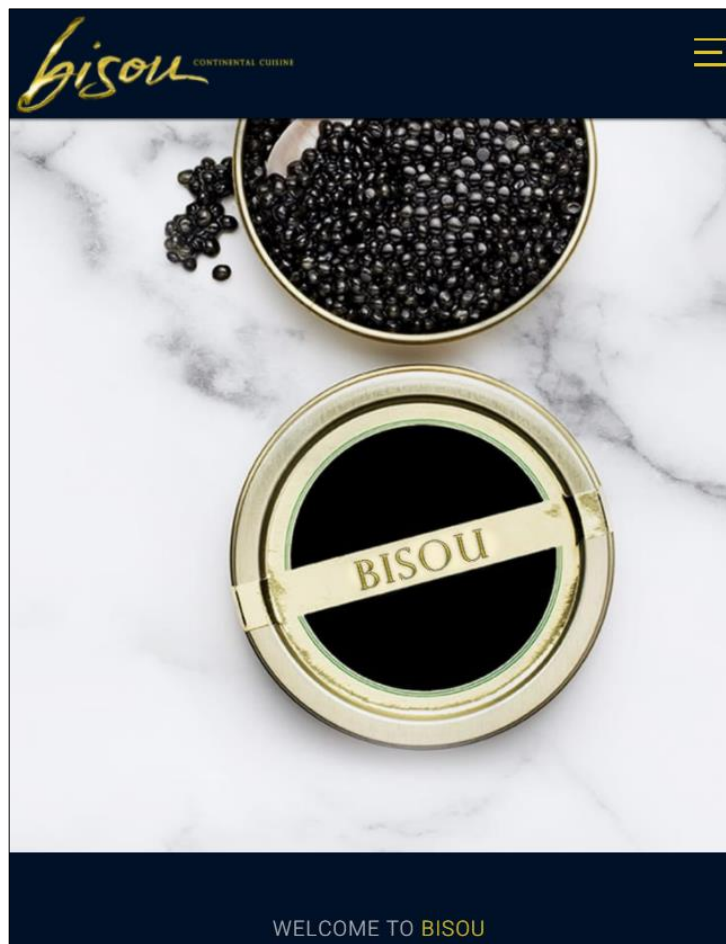
24. As reported in articles published in May and June of 2020 by *EATER Houston*, CLE openly disobeyed the capacity limits and social distancing requirements imposed in light of the Covid-19 pandemic. Videos and images of crowded and largely mask-less gatherings at CLE’s venues, including scenes of the crowded bar at BISOU Houston, an over-capacity pool party at Clé, and a concert at Spire went “viral” on social media. Attached hereto as Exhibit O is a compilation of true and correct copies of articles published by online publications including *EATER Houston*, *EATER Dallas*, *CultureMap Houston*, and *Fox26* discussing CLE’s violations of Covid safety guidelines and CLE’s expansion of BISOU to Dallas.

25. Articles about CLE have also reported that the Texas Alcoholic Beverage Commission has suspended the liquor license at several of CLE’s venues, including at BISOU Houston, and that CLE’s Covid-19 protocol violations earned Spire one of the first spots on the Houston mayor’s “Wall of Shame,” a collection of Houston establishments that failed to follow Covid guidelines, just as the mayor reported a record high of new coronavirus cases and additional deaths. See Exhibit O. Most recently, in June 2021, *EATER Houston* reported that CLE’s liquor license at Clé was suspended for a third time—this time due to a deadly shooting at the nightclub.

BISOU Dallas Opens on July 7, 2021 to Immediate Negative Consumer Reactions and Actual Confusion with BISOUS BISOUS

26. *EATER Dallas*, which has also written about BISOUS BISOUS, published an article about the expansion of BISOU to Dallas titled “A Notorious Houston Hospitality Group Has a New Restaurant in the Works for Uptown Dallas,” which also discusses CLE’s history of liquor license suspensions and packed-out parties during the pandemic. *See Exhibit O*.

27. CLE publicized the opening of BISOU Dallas on social media using the infringing handle @bisoudtx and name “Bisou Dallas” on Instagram and Facebook, as well as the domain name <bisoudallas.com>. In its advertising, CLE frequently displays the name of its Dallas restaurant as simply—BISOU. Attached as Exhibit P is a compilation of true and correct copies of screenshots of BISOU Dallas’s Instagram, Facebook, and website taken on July 11–15, 2021. CLE similarly promotes BISOU Houston using the name BISOU on social media, including on its @bisouhtx “bisouhouston” Instagram account that has amassed approximately 22,300 followers, its @bisouhouston “Bisou Houston” Facebook page, and its website at <bisourestaurant.com>. Attached as Exhibit Q is a compilation of true and correct copies of screenshots of BISOU Houston’s Instagram, Facebook, and website taken on July 13–15, 2021. Below are representative examples of CLE’s prominent use of BISOU:





NEW DALLAS
SOCIAL DINING HOTSPOT

bisou

ARRIVING SUMMER 2021
ONE UPTOWN / @BISOUTX / BISOURESTAURANT.COM

clé
GROUP

 **bisouhouston**
One Uptown

 **bisouhouston** The Clé Group is expanding to #Dallas
Follow: @BisouDTX for updates

:: #BisouDallas / Summer 2021
:: Dallas's Newest Social Dining Hotspot
:: at #OneUptown

:: A #CleGroup Concept
#keytoagreattime
:: #CleHouston #SpireHouston
#BisouHouston #HeartHouston
#CleAngels

23w

28. Just like BISOUS BISOUS, CLE has advertised staff openings on its social media accounts. In or around May 24, 2021, CLE advertised that it was hiring for BISOU on its “Bisou Dallas” Instagram account, as shown below and in Exhibit P.



Even though the above Instagram post specifies in two places that applicants can apply in person at BISOU’s address, on June 9, 2021, one individual mistakenly showed up at BISOUS BISOUS for an interview when, on information and belief, he was seeking to interview at BISOU.


29. One week prior to the opening of BISOU Dallas, a carrier mistakenly delivered a large set of supplies intended for Bisou Dallas to BISOUS BISOUS. The delivery was addressed to “BISOU UPTOWN.” The mistaken delivery, which took up a large portion of BISOUS BISOUS’ limited office space, impeded its employees’ ability to work until they were able to reach someone at BISOU Dallas to pick up the packages.


30. CLE held a launch party for BISOU Dallas the night of July 7, 2021, which it publicized on its social media using the hashtags #bisou and #bisoudallas and the location tag “Bisou Dallas.” See Exhibit P. Within hours of opening, dozens of consumers left negative

reviews about bad food, service, and treatment on the Internet; however, most of these reviews were posted on *BISOUS BISOUS*' pages on Yelp and Google. A compilation of true and correct copies of excerpts of screenshots of the Yelp and Google reviews taken on July 8, 2021 is attached hereto as Exhibit R. Below is just a representative sample of the one-star reviews of BISOUS submitted mistakenly on the Google Business Profile for BISOUS BISOUS on July 7–8, 2021:

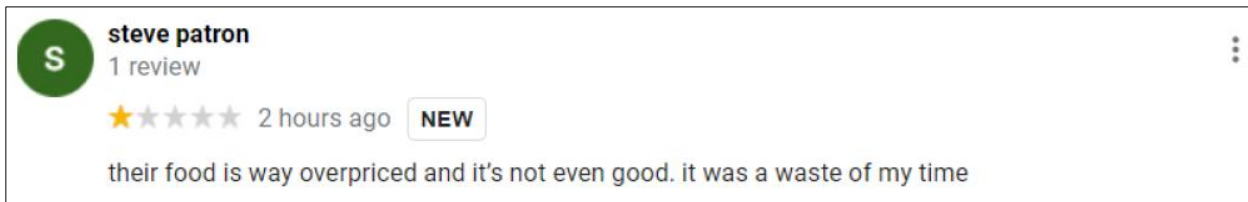
**Vanessa Sanchez**
3 reviews
★☆☆☆☆ a day ago **NEW**
Bad food, had mold also Horrible service, management do better and treat your employees with respect.

**V**
12 reviews · 3 photos
★☆☆☆☆ a day ago **NEW**
They told me to leave because I'm a minority

**Rosaisela Saavedra**
2 reviews
★☆☆☆☆ a day ago **NEW**
The food was terrible and I was racially profiled for being hispano. Will never be going back.

**tatum day**
1 review
★☆☆☆☆ a day ago **NEW**
horrible experience, service was slow and the food was mediocre at best. wouldn't NOT recommend

**Lesley Rodriguez**
1 review
★☆☆☆☆ a day ago **NEW**
DO NOT COME HERE!!! Just such a disgusting place



31. In just 24 hours, BISOUS BISOUS' Google rating had fallen as a result of the one-star reviews intended for BISOUS BISOUS, but placed on BISOUS BISOUS' page. While Google has since deleted *all* of the reviews left on BISOUS BISOUS' Google review page during the last two weeks (including the positive reviews intended for BISOUS BISOUS), the misdirected reviews were visible to our customers and prospective customers for nearly a week. This is devastating for a small business like BISOUS BISOUS that relies on online reviews.

32. Even the media has picked up on the damage suffered by BISOUS BISOUS. As reported by the *Dallas Observer* on July 12, 2021:

Bisou is a club-centric social dining spot that opened July 7 and, unfortunately, is already racking up negative reviews. And herein lies Meyer's true 21st-century problem: Customers are mistakenly leaving one-star reviews for her bakery instead of the restaurant.

See Exhibit S, which is a true and correct copy of the article published by the *Dallas Observer*, "Just One Kiss: Bisous Bisous Gets 32 One-Star Reviews Intended for New Neighbor."

33. *We will never know how many customers decided not to visit or order from BISOUS BISOUS because they believed the negative reviews for BISOUS BISOUS were about BISOUS BISOUS. We also will never know the "ripple effect" of these negative reviews and the extent to which people are deterred from patronizing my bakery, merely because they heard of how awful a place called "BISOUS" is. While I was concerned about CLE's infringement, I never could have imagined just how devastating it actually turned out to be, and how disruptive it has been on my business.*

34. Consumers of BISOU Dallas also mistakenly selected the location tag for Bisous Bisous on Instagram and Facebook when posting photos of BISOU Dallas. True and correct copies of screenshots of BISOUS BISOUS' location tag page on Instagram at <https://www.instagram.com/explore/locations/419600349/bisous-bisous-patisserie> and of two public, mis-tagged photos on Instagram and Facebook taken on July 14–15 are shown below and attached hereto as Exhibit T.



35. As shown in the above-right screenshot taken from BISOUS BISOUS' location tag page on Instagram, Instagram users looking for photos of BISOUS BISOUS will see a photo of BISOUS mixed in with photos of BISOUS BISOUS. This erroneously tagged photo has become one of the "top" posts on BISOUS BISOUS' location tag page on Instagram surrounded by photos posted by BISOUS BISOUS and its customers:

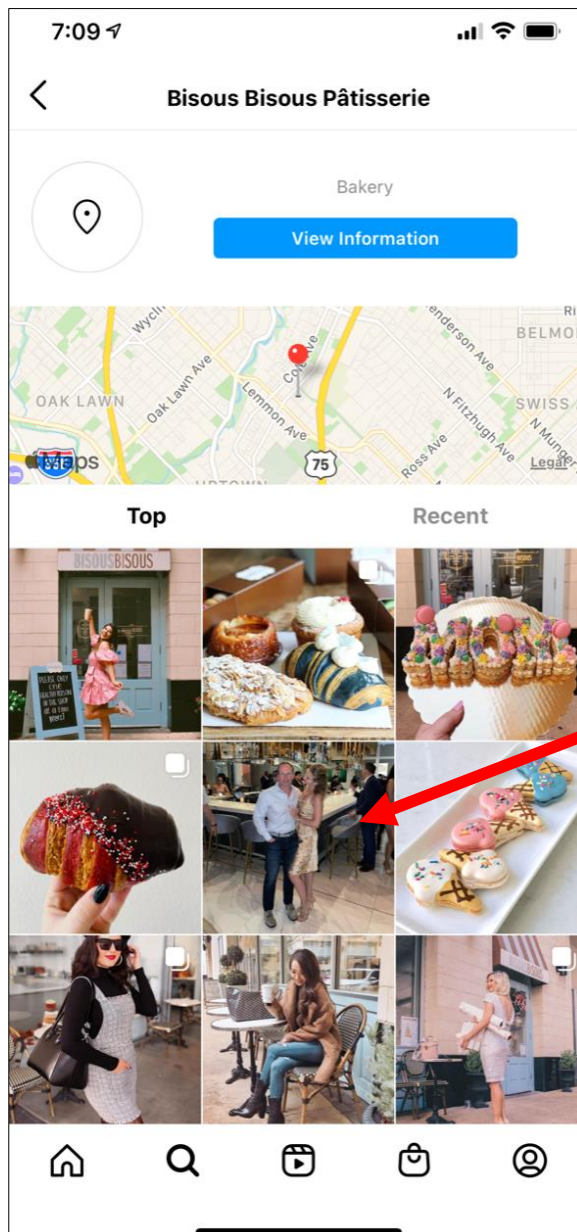


Exhibit T.

36. Since BISOU Dallas's opening, Bisous Bisous has mistakenly received approximately a dozen calls intended for BISOU Dallas. Consumers have called with questions for BISOU, including whether they bring balloons, what the hours are, whether they can make a reservation, and what the wait time is at BISOU. On July 10, 2021 alone, BISOUS BISOUS' bakery manager counted 11 calls that were intended for BISOU Dallas.

37. BISOUS BISOUS filed a complaint against CLE in the Northern District of Texas alleging trademark infringement on July 13, 2021. Since then, CLE has nonetheless continued to promote BISOU on social media, including on Facebook and Instagram. See Exhibits P and Q.

38. I declare under penalty of perjury that the foregoing is true and correct.

Date: July 15, 2021



Andrea Meyer